HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Application No.196 of 2006

1. Prakash Chandra Bhatt
   S/o Kashav Datt
   R/o village Jageshwar
   P.O. Jageshwar
   P.S. Kotuli, Tehsil Bhanoli
   District Almora
2. Naveen Chandra
   S/o late Narayan Datt Bhatt
   R/o village Gothura
   P.S. Kotuli
   Tehsil Bhanoli District Almora .....Applicants

Versus

1. Judicial Magistrate, Almora
2. Kimanand S/o Jai Datt
   Village Koteshwar
   P.S. Kotuli
   Tehsil Bhanoli
   District Almora ....Respondents

Dated :- 05.04.2006

Hon'ble J. C. S. Rawat, J.

1) The petition under section 482 Cr.P.C. has been filed for quashing the summoning order dated 09.03.2006 passed by the Judicial Magistrate, Almora in criminal case No.05/2006. It has also been prayed to quash the proceedings of criminal case No.05/2006 under sections 323, 504, 506 IPC pending before the Judicial Magistrate, Almora.

2) Brief facts of the case are that the respondent No.2-Kimanand filed a complaint before the learned Magistrate against the applicants alleging therein that the respondent No.2 proceeded towards Haldwani from Jageshwar in a 'barat' in the morning of 25.04.2005 and the accused persons were also in that 'barat'. When the complaint returned from the barat in the evening, he found that the accused persons also reached at

Jageshwar. When he was returning to his home at about 10:30p.m., the accused persons surrounded him in a jungle and assaulted him and also threatened him with the dire consequences. It was further alleged that the applicants-accused took away a sum of Rs.2000/- from his pocket. The complainant reported the matter. Thereafter, the matter was investigated by the Patti Patwari, who has found that the story as alleged by the complainant was totally false and a final report was submitted and a complaint was submitted to the learned Magistrate under section 182 Cr.P.C. for prosecuting the complainant-respondent No.2. The court below sent the notices to the informant and the informant filed the objections. The court below treated these objections as a complaint case. Thereafter, the learned Magistrate recorded the statements under section 200 & 202 Cr.P.C. The statements of complainant as well as two witnesses i.e. Chandan Singh and Sarowar Khan were recorded by the Magistrate. Both the witnesses have stated that they have not seen the incident. They have only stated that when the complainant was going in the barat, the accused persons were having 'danda' in their hands. When the complainant came back, he informed them about the incident. Both the witnesses have also stated that they saw the injuries on the face of the complainant. After appraisal of the evidence, the learned Magistrate summoned the applicants by the impugned order. Feeling aggrieved by the order of Magistrate, the present petition has been filed.

3) The learned counsel for the applicants contended that the learned Magistrate has not applied his mind while taking cognizance against the applicants. It was the duty of the trial court that he should have put

questions to the complainant as well as to the other witnesses. The Magistrate has proceeded in the complaint filed under section 182 Cr.P.C. and the summoning order was passed simultaneously. The Magistrate has to consider the statement on oath recorded under sections 200, 202 Cr.P.C. and other evidence filed on behalf of the complainant. It is the duty of the Magistrate to ensure as to whether the case is probable and whether the case is concocted or correct one. The learned Magistrate should have put questions to the witnesses as well as to the complainant. The learned counsel for the applicants has referred the decision of the Hon'ble Apex Court in **M/s Pepsi Food Ltd. Vs. Special Judicial Magistrate J.T. 1997 (8) S.C. p/705,** in which it has been held as under:

> *"Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. he has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeeded in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinize*

the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

4) The above proposition of law clearly emphasizes that the Magistrate, while summoning the accused or taking the cognizance, should scrutinize the evidence and put the questions to all the witnesses as well as to the complainant.

5) In view of the above, the summoning order passed by the learned Magistrate is liable to be set aside. The Magistrate should have put the question to the complainant and his witnesses to know the veracity of the incident. The Magistrate should have seen the corroborative evidence.

6) Therefore, the summoning order dated 09.03.2006 passed by the Judicial Magistrate, Almora in criminal case No.05/2006 is set-aside. The case is remitted back to the learned Magistrate to decide the same afresh in the light of the observations made above.

7) The petition is disposed of accordingly.

(J. C. S. Rawat, J.)

Dated 05.04.2006

LSR